UNITED STATES GOVERNMENT

memorandum

BUREAU OF INDIAN AFFAIRS

JUNEAU AREA OFFICE

DATE: April 22, 1994

REPLY TO ATTN OF: Area Director, Juneau Area

SUBJECT: Proposed IRA Constitution of the Qawalangin Tribe of Unalaska

TO: Deputy Commissioner of Indian Affairs
Attn: Division of Tribal Government Services, MS 2611-MIB

Attached is the proposed constitution prepared by the Qawalangin Tribe of Unalaska, Alaska. Also attached is Resolution No. 93-15 which requests the Secretary to conduct the election for adoption of the constitution.

We have reviewed this proposed constitution and offer the following comments in those areas which we believe could be corrected or clarified:

ARTICLE IV - MEMBERSHIP:

Section 1. Basic Membership: The tribe should state the date the base roll was adopted and approved to enable future councils and members to trace descendance from the tribe's official base roll. The tribe might also wish to consider placing a time limit on making corrections to the base roll so that the base roll can be closed and become a static document reflecting the final list of original members.

We recommend that a separate section be added to provide for the preparation of a current membership roll which must be maintained separately from the static non-changing base roll.

Section 2. Qualifications for Future Membership: This section includes adopting persons of Aleut descent. We recommend that adoption provisions be spelled out in a separate section and include any special qualifying factors for membership eligibility through adoption.

Section 3. Non-Voting Membership: This section makes reference to residency of "at least one (1) continuous year" in order to maintain voting rights. This language may cause some confusion over interpretation with Article V, Section 2, Eligibility for Candidacy and Article VII, Section 1, Voter Qualification which both require residence for at least one year "immediately preceding" an election. The terminology of "one continuous year" could be interpreted to mean that at any time during a member's life, if he has resided in the village for a continuous 12 month period, he would be eligible to be a voter or a candidate for council since it is not clear that the one year continuous residency must have been immediately preceding the election. We recommend that the tribe consider revising this section to clarify the intent.

Section 8. Definition of Aleut: This section defines 'Aleut' as "...an Alaska Native whose ancestors were known as 'Unangin' and whose culture originated in that part of Alaska defined as the 'Aleut region' under the Alaska Native Claims Settlement Act." The tribe should clarify that other Alaska Native persons of Aleut descent from the Kodiak Region, Bristol Bay Region and the Prince William Sound Region would not be eligible for membership in the Qawalangin Tribe of Unalaska.

ARTICLE V - GOVERNING BODY:

Section 2. Eligibility: As pointed out above, this section has a different residency requirement than in Article IV, Sec. 3. The tribe needs to clarify the intent of Article IV, Sec. 3.

Section 3. Composition: The first sentence of this section indicates the council shall be elected by a majority vote of the qualified members. The term should be "qualified voters" since a person may qualify for membership, but may not qualify to be a candidate for office.

Section 4. Officers: This section conflicts with Article VII, Sec. 2. See our comment regarding the process for selection of officers on page 3.

Section 6. Quorum: We note that Section 11 of this article does not require a quorum to be present when it is necessary for the council to fill a vacancy. The exception in Section 11 should be noted in this section dealing with the requirement for a quorum to be present.

Section 8. Resignation and Forfeiture: There appears to be a typographical in line two of this section. The word "whose" should be changed to "who".

Section 10. Recall: The word "effected" should be changed to "affected" in lines 11 and 13 of this section. The officers subject to recall are affected by such proposed action. The results of the election would determine if the recall would be effected.

The tribe might want to consider adding another sentence to this section that would prevent any of the council members from being recalled again for the same reason during their term of office.

ARTICLE VII - ELECTIONS:

Section 1. Voter Qualification: This section and Article IV, Section 3 do not match. This section requires a one year residency immediately preceding the election while Article IV, Section 3 only requires residency for one continuous year. The tribe should clarify their intent for the term "one continuous year".

Section 2. Elections: This section appears to conflict with Article V, Section 4 which states that "Officers shall be selected by the Council from among its members immediately following an annual meeting."

This section, on the other hand, states that the President, Vice-President, and Secretary shall be elected to various terms, (i.e., one-year, two year and three year) by the membership. How can the members elect the officers if the officers are selected from within the council after the council is elected? The tribe should resolve these conflicts and consider a different method for establishing the staggered terms.

Section 7. Absentee Ballot: The permission to vote by absentee ballot does not contain the same restrictions for the one year residency requirement specified in Article IV, Section 3 and Article VII, Section 1. This conflict needs to be resolved. In addition, the term "qualified member" is again included here. It should state instead that any "qualified voter" will be permitted to vote by absentee.

Section 8. Notice: The council should give all "qualified voters" written notice instead of all "qualified members". We do not find any explanation of what might be acceptable and documentable in giving "verbal notice" for an election. We recommend that the council specify, in an election ordinance, how the election board can prove that "verbal notice" was given to prevent challenges to the election.

ARTICLE VIII - MEETINGS:

Section 2. Quorum: Article V, Section 6 also contains a statement of what the quorum is for the tribal council. It is not necessary to have this statement in both places. The language in both sections should be reconciled and the tribe should decide which section is best suited for placement of the provision for the council quorum.

Section 3. Tribal Membership Meetings: This section calls for a petition signed by at least 30% of the eligible voting members and specifies that the quorum of voting members shall consist of 20% of the eligible voters. However, Article V, Section 10 for a Recall states that 20% of the eligible voters can sign a petition, but 30% of the eligible voters must vote for a valid election. We do not know if the council realizes the differences in the percentages for these two provisions. They may want to consider these differences. However, if they are satisfied that the differences were intentional, they need to be alert to follow the proper percentages in each type of action contemplated for membership meetings and recall elections.

There appears to be a typographical error in the sentence in this section which states "An action is effective when adopted by a majority vote of those attending, in person or by absentee ballot a membership meeting". Should the last three words of this sentence be changed to "at the membership meeting?"

The very last sentence of this section deals with referendum actions by the membership. This sentence should be moved into a separate section entitled "Referendum" which permits the membership to approve or reject acts of the council. Language should also be added that the council may also initiate a referendum on its own without a petition from the membership.

There is no section in this constitution which permits the membership to initiate legislation by filing an initiative petition. To preserve the membership's right for popular participation, we recommend that an "Initiative" section be included in the constitution.

ARTICLE IX - POWERS:

Section 4. Powers Reserved to Membership: Subsection (a) states that "No lands or interests in lands owned by the Tribe may be sold, encumbered or disposed of without the favorable vote of at least a majority of the entire tribal membership." This language contradicts other sections of the constitution in that a member has to be qualified to vote and the eligibility to vote is subject to the one year residence requirement. A favorable vote of a "majority of the entire tribal membership" is considerably different than a favorable vote of a "majority of the eligible voters". The tribe should be advised to study this section and clarify the intent for the class of voters.

ARTICLE XIV - ADOPTION:

This article needs to be reworded. Presently the last sentence contains duplicate language for amending the constitution which is already covered in Article XIII - Amendments. The last sentence of this Article should be deleted.

The effective date for the constitution is also misstated. We recommend the following language to replace the existing paragraph:

"This constitution, when adopted by a majority vote of the qualified voters of the Qawalangin Tribe of Unalaska, voting at an election called for that purpose by the Secretary of the Interior, or his authorized representative, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be effective from the date of his approval."

This constitution shall not become effective until it has been approved by the Secretary.

CERTIFICATION OF RESULTS OF ELECTION:

The certification included in this constitution is not proper and therefore must be left out. The Secretary's authorized representative will provide the appropriate certification language when the election has been authorized.

This completes our review of the constitution document submitted by the Qawalangin Tribe of Unalaska. We have advised the tribe's advisors that this constitution is being submitted to your office for the legal review needed before the election is authorized. A copy of this transmittal letter is being sent to the tribe and to Mr. Paul Swetzof, the tribe's advisor.

This office is in the process of reviewing the base roll and two separate sections of membership rolls submitted. One is for members born in 1976 and prior and the other is a list of members born in 1977 and later. We will need to reconcile the three lists before we can determine if certification is possible to adequately identify all the eligible voters. We note that there appears to be 161 persons listed with unknown or incomplete addresses out of the 490 enrollees. Of the 490 enrollees, 396 are 18 years of age or older. The 161 missing addresses constitute 41% of the eligible voters who would not be able to be notified of the election unless their addresses are provided to the Superintendent before the election is held. The tribe has been working on preparing their

membership roll since 1989. We provided them with census rolls from the 1940's and 1950's so they could reconstruct a base roll of original members. From that base, the tribe has worked closely with the tribal membership in preparing the membership rolls that have been presented to our office. Their Enrollment staff has also been in close contact with Juneau Area staff throughout the development of the membership roll.

The Qawalangin Tribe of Unalaska is located on and near Unimak Island on the Aleutian Chain in Southwestern Alaska. The Aleut people living in Unalaska were evacuated by the United States during World War II. They were transported to Southeast Alaska to live in deteriorated buildings of several fish canneries during the winter months in the early 1940's. Many of the people who were evacuated died in the fish camps and were not able to return to their village after the United States allowed them to return in 1944. Unfortunately, the village people returned to homes that had been destroyed and vandalized, and their family personal and religious belongings were gone. The Russian Orthodox influence began as early as 1867 among the natives in Unalaska. The historical information that this office collected in the summer of 1993 was left in Washington, D.C., when we were discussing the publication of a list of federally recognized tribes for Alaska. The Unalaska file in our office has correspondence with and about Unalaska since December 1, 1936.

We asked the tribe's consultant, Paul Swetzof, if he had collected other historical background information to accompany this constitution. He advised that he felt it was no longer necessary since Unalaska is now listed as a federally recognized tribe.

The Aleut people of Unalaska began the process of reactivating their tribal government activities in May of 1989. Regina Parot of this office traveled to Unalaska in 1989 to meet with the tribal members and the newly elected interim tribal council. The members were interested in developing a written tribal constitution at that time and wanted to have one written and adopted in July, 1989. The interim council already had a traditional constitution prepared and Mrs. Parot spent a few days with the council advising them of the provisions in their traditional constitution that could be improved or strengthened. Part of the impetus behind their eagerness to organize was their interest in managing and controlling the Judgment funds they were awarded in 1986 for Docket 369.

We have found the Unalaska people to be conscientious and committed to developing a stable tribal government. In addition, they have kept their membership informed and involved throughout this process. They have made changes to their written traditional constitution a few times, but have always taken the changes back to the members for adoption. As you can see by the adoption certification included in this constitution, the members have also adopted this version of their proposed IRA constitution. We recommend that the secretarial election be approved as requested.

Warren W. Heisler, Jr.

Attachment